

No. 9/5/84-6Lab./3736.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal Faridabad in respect of the dispute between the Workman and the management of M/s Premier Strew Board Paper Mills Pvt. Ltd., Plot No. 87-88, Sector 25, Faridabad :—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 466/1983

Between

SHRI NAWAL SINGH WORKMAN AND THE MANAGEMENT OF M/S PREMIER STREW BOARD
PAPER MILLS PVT. LTD., PLOT NO. 87-88, SECTOR-25, FARIDABAD.

Present.—

Shri Manohar Lal for the workman.

Shri R.C. Sharma for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Nawal Singh and the management of M/s Premier Strew Board Paper Mills Pvt. Ltd., Plot No. 87-88, Sector-25, Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Nawal Singh was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement dated 28th May, 1984 alleged that he was employed as helper on 13th November, 1978 and his last drawn pay was Rs. 501 per month. It was then alleged that he joined the Worker's Union as Cashier and was victimised due to his trade union activities when his services were terminated on 2nd February, 1983 in an illegal manner. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The respondent company in its written statement dated 27th July, 1984 pleaded that the management was previously running three shifts which was reduced to two shifts and finally the factory was put to run one shift only in January, 1983, due to which a number of workers of different categories became surplus. It was then pleaded that a notice of retrenchment was given to the claimant on 31st January, 1983 which was received by him and was given an option to work as helper in the section of loading and unloading of Bhusa, but he did not agree to work in that Section due to which the management retrenched him. It was also pleaded that a sum of Rs. 1803-17 paise was offered to him but he refused to receive the same and that said amount was sent by draft on 7th March, 1983. Which was received back as undelivered. It was pleaded that the retrenchment took place with effect from 28th February, 1983 when he did not agree to the alternative job.

4. The claimant in his rejoinder reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed on 17th August, 1984:—

(1) Whether the termination of service of Shri Nawal Singh was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the management has examined one witness and the documents Ex. M-1 to M-8 have been tendered into evidence. The claimant has himself appeared in the witness box and document Ex. W-1 has been tendered into evidence. After going through the evidence, both oral and documentary and hearing the representatives of both the parties, my finding on the above issue is as under:—

Issue No. 1:

7. The management has examined MW-1 Shri Om Parkash Sharma Manager, who stated that he had brought the attendance register and that the respondent mills manufactured paper. He further stated that previously there was three shifts, but in February, 1983, only one shift was being run and that Ex. M-1 was the copy of the letter sent to the Excise Department in that respect. He further stated that they had to retrench the workers due to less work and displayed the seniority list of the workers on the notice board copy Ex. M-2. He further stated that besides temporary workers 21 regular workers were retrenched and that notice Ex. M-3 was given to the claimant which was received by him and that an alternative job was offered to the claimant in that very notice, but the claimant did not accept the offer, when his account copy Ex. M-4 was prepared.

He then stated that the amount was offered to him but he refused to receive the same,—*vide* vouchers Ex. M-5 and further that the amount was sent,—*vide* letter Ex. M-6 with draft copy Ex. M-7 but the claimant refused to receive the letter and that the draft was encashed by the management within six months because thereafter it would have become invalid. He also stated that Ex. M-8 was the copy of the form 'P' which was sent to the Government on 1st February, 1983. He further stated that one month's notice pay was given to the claimant which was Ex. M-3 and that no worker had been engaged by them in the place of the claimant.

8. Shri Nawal Singh claimant has appeared as WW-1 and stated he was appointed in the respondent factory on 13th November, 1978 as Maintenance Helper and that after some days they formed a Union in which he was the cashier and that letter Ex. W-1 was given to him. He further stated that prior to that he was asked to leave the Union but he refused to do so and was prevented at the gate of the factory and that no compensation was given to him and that the respondent had recruited some persons.

9. A perusal of the above evidence would show that according to the testimony of MW-1 Shri Om Parkash Sharma, Manager of the respondent-management, the work became less, due to which instead of three shifts only one shift was being run in February, 1983 and that they have retrenched a number of workers including the claimant and that retrenchment notice copy Ex. M-3 was given to the claimant in which was offered an alternative job but he refused to accept the same. His testimony further shows that he refused to receive the amount of compensation etc. amounting to Rs. 1803-17 paise,—*vide* voucher Ex. M-5 on 28th February, 1983 on which date the period of one month's notice expired. The evidence further shows that a draft of Rs. 1,803-17 paise was also prepared by them but he refused to receive the registered letter Ex. M-6 with which the said draft was sent. The respondent-management, therefore, complied with the provisions of Section -25 of the Industrial Disputes Act, 1947, but the claimant refused to receive the amount of compensation etc. The testimony of WW-1 Shri Nawal Singh does not help him because his services were not terminated being an active member of the Union but due to mass retrenchment which took place as the work became less as mentioned above. Consequently the termination of service of the claimant was justified and in order and as such the claimant is not entitled to any relief. The award is passed accordingly.

Dated 29th April, 1985.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 350, dated 29th April, 1985

Forwarded (four copies), to the Commissioner & Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under Section- 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab/3796.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s High Polymer Labs. Plot No. 8, Sector 25, Ballabgarh :—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 133 of 1983

between

SHRI JAGDISH CHAND WORKMAN AND THE MANAGEMENT OF M/S HIGH POLYMER LABS,
PLOT NO. 8, SECTOR-25, BALLABGARH

Present :—

Shri M.K. Bhandari for the workman.

Shri R.C. Sharma, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Jagdish Chand, workman and the management of M/s High Polymer Lbas, Plot No. 8, Sector 25, Ballabgarh, to this tribunal for adjudication :—

Whether the termination of service of Shri Jagdish Chand was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. In the claim statement filed on 5th June, 1984, it was alleged that the claimant was employed with the respondent on 14th November, 1977 as Hydrogen Operator and was drawing a salary of Rs. 340 per month, when all of a sudden, he was served with a suspension letter on 7th August, 1982 and charge-sheet was served on 8th August, 1982 which contained the false allegations. It was then alleged that he submitted his explanation on 10th August, 1982 when the domestic enquiry was ordered against him on 26th September, 1982. It was then alleged that he demanded certain facilities from the enquiry officer but no such facilities were given to him and that the enquiry proceedings were just an eye wash and that witnesses of the workman were intimidated and ultimately the claimant was dismissed on 21st November, 1982 because he was an active member of the Union. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The management in their written statement, dated 19th June, 1984 pleaded that the claimant was an ordinary worker and had to perform different duties. It was then pleaded that the allegations made in the charge-sheet were correct and that domestic enquiry was held against the claimant in which he was given full opportunity to cross-examine the witnesses and to produce his defence evidence, which was according to the principles of natural justice. It was denied that witnesses of the workman were intimidated. It was then pleaded that a second show cause notice was given to the claimant to explain the proposed punishment and thereafter he was dismissed.

4. The claimant in his rejoinder filed on 30th July, 1984, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 30th July, 1984 :—

(1) Whether the enquiry was fair and proper ? OPM

(2) Whether the termination of service of Shri Jagdish Chand was justified and in order ? If not, to what relief is he entitled ? OPM.

6. It may be mentioned that issue No. 1 was treated as preliminary issue. The management has examined two witnesses and documents Exhibit M-1 to M-19, have been tendered into evidence. The workman has examined two witnesses and documents, Exhibit W-1 to W-13, have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings are as under :—

Issue No. 1 :

7. The Management has examined MW-1 Shri Devinder Singh, Advocate who stated that he was appointed as Enquiry Officer in this case,—vide letter Exhibit M-1 and that Exhibit M-2 was the copy of the charge-sheet. He further stated that the enquiry was held by him, when the claimant was represented by Shri Parshotam Parshad and his letter of authority was Exhibit M-3 and that the document Exhibit M-4 contained the proceedings of the enquiry. He further stated that the document Exhibit M-5 to M-13 were produced during the enquiry while Exhibit M-14 contained the findings of the enquiry when he found the claimant guilty of the charges levelled against him and submitted his report to the management. He further stated that copies of day to day proceedings were supplied to the workman. MW-2 Shri Mohinder Singh, Director of the respondent, stated that Exhibit M-15 was the letter of apology, dated 30th January, 1979 received from the claimant while Exhibit M-16 was the warning letter issued to him. He further stated that the copy of the finding of the Enquiry Officer was given to the claimant and Exhibit M-17 was the second show cause notice and Exhibit M-18 was the reply given by the claimant and thereafter, dismissal order Exhibit M-19 was passed against the claimant.

8. Shri Jagdish Chand claimant had appeared as WW-1 and stated that he was employed in the factory on 14th November, 1977 and worked on Hydrogen Machine and was drawing Rs. 345 per month. He further stated that he received charge-sheet and gave his explanation when the enquiry was held against him, but his statements were not recorded correctly. He further stated that he was not permitted to bring any representative to help him in the enquiry. He further stated that letters Ex. W-1 to W-9 were sent by him and Ex. W-10 to W-13 were the postal receipts. He then stated that Shri Parshotam Parshad was a worker of the company and was appointed by the respondent as representative of the claimant. He then stated that he was not asked to work and empty the tanker nor he refused to do this job and was never put on this job. WW-2 Shri Babu Lal stated that he was Operator in the respondent factory like the claimant. He further stated that it was the duty of the helper to empty the tanker. He then stated that neither he nor the claimant was asked to empty the tanker on 6th August, 1982 at 12:30 p.m. and that the charge-sheet was given to the claimant because of his union activities in a revengful spirit.

9. A perusal of the above evidence would show that the charge-sheet was served on the claimant to the effect that on 6th August, 1982, one acid tanker No. DHL 4900 containing acid arrived at the respondent factory when the claimant and two more workers came for duty at night at 12.30, who used to do the job of loading and unloading of the goods and that Shri Surinder Kumar Juneja, Factory Supervisor asked the claimant and other two workers to empty the tanker but he refused to do so and when the Supervisor asked the other workers to empty the tanker, the claimant and his two colleagues instigated the other workers not to empty the acid tanker due to which this job had to be done on 7th August, 1982 and the management had to pay demurrage charges to the transport company. It was alleged that the claimant had disobeyed the order and instigated the other workers not to empty the acid tanker, due to which the respondent company suffered losses. Shri Devinder Singh, Advocate was appointed as Enquiry Officer and the enquiry Proceedings Exhibit M-4 go to show that the management examined Shri Dinesh Malik, Personnel Officer, who proved the documents before the Enquiry Officer. Shri Surinder Kumar Juneja, Supervisor repeated the allegations made in his complaint, on the basis of which charge-sheet was given to the claimant Shri Rajbir Singh, Operator corroborated the testimony of Shri Surinder Kumar Juneja. Shri Mohinder Singh Director deposed that Shri Surinder Juneja rang him up at his residence regarding the incident and that the tanker was ultimately emptied on the next day morning. The claimant himself appeared before the Enquiry Officer and examined Shri Babu Ram and Shri Kapil Dev, Shri Sarju Parshad and Shri Likhi Ram denying the incident. The Enquiry Officer considered the entire evidence both oral and documentary produced before him and accepted the evidence led by the management and rejected the testimony of the claimant and his witnesses in which they had denied the incident and took the plea that the claimant was not asked to empty the tanker. The Enquiry Officer has given cogent reasons while rejecting the evidence led by the workman and came to the conclusion that the charges levelled against the workman stood proved.

10. It was argued on behalf of the claimant that the charges levelled against the workman were false. The argument is without any force because the witnesses produced by the respondent-management clearly deposed that the claimant had refused to empty the acid tanker on 6th August, 1982 at 12.30 and also instigated the other workers not to do so, with the result that tankers had to be emptied on the next day on 7th August, 1982 by the workmen in the morning shift and demurrage had to be paid by the Company. It was then argued that it was not the duty of the claimant to empty the tanker. In the charge-sheet, the claimant was described as a workman and consequently, he should not have disobeyed the orders of the respondent-management to empty the acid tanker at night at about 12.30 and should not have incited the workers for not doing this job. It was also argued that disciplinary action against the claimant was taken due to his union activities. The argument does not carry any weight because the enquiry against him was held as he disobeyed the orders of the supervisor and incited the other workers not to empty the tanker which resulted into loss to the company. As already mentioned above, the enquiry officer has given reasons for accepting the version of the management and rejecting the evidence of the claimant. His findings are, therefore, based on evidence and there is no cogent ground to interfere with the same. The enquiry was thus fair and proper.

11. On the quantum of the punishment, the representatives of the parties have been heard. The charges which were levelled against the claimant and proved against him have been set out in details above. These charges however do not justify the dismissal of the claimant, but keeping in view the circumstances that he disobeyed the orders of the supervisor and incited the workers not to empty the acid tanker which resulted in losses to the respondent Company, the claimant committed an act of gross mis-conduct and therefore it is not a fit case in which he should be reinstated because it was argued that he lost confidence of the management and no useful purpose would be served in keeping in service such disobedient employee. The ends of justice would be met if instead of reinstatement, the claimant is awarded lump sum compensation equivalent to (five) 5 years wages which he was getting prior to his dismissal. The award is passed accordingly.

Dated the 1st May, 1985.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 369, dated 1st May, 1985.

Forwarded (four copies), to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.